



2007 SENATE BILL 371

December 21, 2007 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions.

1 **AN ACT to amend** 553.27 (4) of the statutes; **relating to:** offering circulars
2 provided to prospective franchisees under the franchise investment law
3 (suggested as remedial legislation by the Department of Financial
4 Institutions).

Analysis by the Legislative Reference Bureau

Under the state's franchise investment law, a person attempting to sell a franchise must generally register the franchise offered for sale with the Division of Securities (division) and provide a copy of an offering circular, in a form required by the division or permitted under federal law, to the prospective franchisee at least ten business days prior to the earlier of: 1) the prospective franchisee's execution of any binding franchise or other agreement; or 2) the receipt of any consideration.

This bill specifies that the time period for the franchisor to provide a copy of the offering circular to the prospective franchisee is at least 14 calendar days, rather than ten business days, prior to the the earlier of: 1) the prospective franchisee's execution of any binding franchise or other agreement with the franchisor or any affiliate of the franchisor; or 2) the payment of any consideration to the franchisor or any affiliate of the franchisor.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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Law Revision Committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 553.27 (4) of the statutes is amended to read:

2 553.27 (4) No franchise subject to registration under this chapter may be sold
3 in this state unless a copy of an offering circular is provided to the prospective
4 franchisee at least ~~10 business~~ 14 days prior to the execution by the prospective
5 franchisee of any binding franchise or other agreement with the franchisor or any
6 affiliate of the franchisor or at least ~~10 business~~ 14 days prior to the receipt ~~payment~~
7 of any consideration to the franchisor or any affiliate of the franchisor, whichever
8 first occurs. The offering circular may be in a form that the division requires by rule,
9 in a form permitted under 16 CFR 436 or in a form permitted by a successor to that
10 regulation.

NOTE: After July 1, 2008, franchisors who offer and sell their franchises nationally in multiple states must comply with a new FTC regulation requiring a franchisor to provide a franchise disclosure document to a prospective franchisee at least 14 calendar days before a binding franchise agreement is signed or any payment is made, whichever first occurs. Wisconsin law requires the disclosure document to be furnished at least 10 business days before the signing or payment, reflecting the former FTC requirement. This bill, by incorporating the new federal requirement into Wisconsin law, eliminates the inconsistency between the two, assuring compliance with both.*

The pertinent FTC regulation provides:

In connection with the offer or sale of a franchise to be located in the United States of America or its territories, unless the transaction is exempted under Subpart E of this part, it is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act: (a) For any franchisor to fail to furnish a prospective franchisee with a copy of the franchisor's current disclosure document, as describe in Subparts C and D of this part, at least 14 calendar days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. [16 CFR s. 436.2 (a).]

*Until July 2, 2008, federal regulations allow franchisors to use either the 10-day business day or 14-calendar day requirement.